ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	

FEDERAL-STATE JOINT BOARD REVIEW
OF THE DEFINITION OF UNIVERSAL SERVICE

COMMENTS OF

THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, ALLIANCE FOR COMMUNITY MEDIA, APPALACHIAN PEOPLE'S ACTION COALITION, CENTER FOR DIGITAL DEMOCRACY, CONSUMER ACTION, THE COMMUNITY TECHNOLOGY INSTITUTE, CONSUMER FEDERATION OF AMERICA, EDGEMONT NEIGHBORHOOD COALITION, THE MIGRANT LEGAL ACTION PROGRAM, THE NATIONAL COALITION FOR THE HOMELESS, THE NATIONAL COMMUNITY VOICE MAIL FEDERATION, AND DR. MARCIA ZASHIN, EDUCATION CONSULTANT TO THE CLEVELAND PUBLIC SCHOOLS AND PROJECT ACT

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SUMMARY

The Telecommunications Act of 1996 (the "1996 Act") requires that the Federal Communications Commission ("Commission") adopt rules to ensure non-discriminatory access at just, reasonable and affordable rates to basic telecommunications services for all Americans. The United States Conference of Catholic Bishops, *et al.* ("USCCB") believe that the current list of services supported by the universal service fund ("USF"), however, is not sufficient to bring affordable services to low-income customers. In order to address this problem, USCCB, *et al.* urge the Joint Board to recommend that the Commission broaden the definition of universal service to include additional services and functionalities that will make telecommunications services available and affordable for all subscribers.

First, the Joint Board should recommend that the list of core services should be expanded to include additional functionalities that will increase the accessibility and affordability of residential wireline service. The list should include soft dial tone to ensure that those who have had their local service disconnected still retain access to potentially lifesaving emergency services. The list also should include expanded area service, which allows consumers to call services and individuals that comprise their communities of interest, but are located outside the basic local calling area, for the price of a local call.

Second, because it is premised on access to a residential line, the current definition of universal service is inadequate to meet the needs of low-income individuals for whom obtaining residential service is cost-prohibitive or not possible. As such, the

Joint Board should recommend that the Commission expand the list of supported services to include functional substitutes for residential wireline service. Prepaid wireless service is such a substitute, as it provides customers with the means to make and receive calls without the need for a residence or residential line. Likewise, a combination of prepaid local usage and voice mail also provides the means to make local calls and retrieve calls via voice messaging. And the fact that the fees for such plans are paid in advance with universal service funds ensures that eligible customers will not be disconnected from the network for failure to pay phone bills. In this regard, prepaid wireless service and the combination of prepaid local usage and voice mail provide the same functionalities as the residential wireline service already supported by the universal service fund, while allowing those customers who cannot obtain residential wireline service to receive universal service benefits for which they qualify, but lack the means to use under the current definition.

USCCB, *et al.* strongly believe that support of soft dial tone and expanded area service, as well as functional substitutes for residential wireline service, such as prepaid wireless service and a combination of prepaid local usage and voice mail, would enhance the Commission's objectives, pursuant to the 1996 Act, of increasing subscribership and ensuring access to safety, health, educational and other essential services by all Americans. Accordingly, USCCB, *et al.* urge the Joint Board to recommend to the Commission that these services be included within the definition of services supported by the federal universal service fund.

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The United States Conference of Catholic Bishops ("USCCB"), Alliance for Community Media, Appalachian People's Action Coalition, Center for Digital Democracy, the Community Technology Institute, Consumer Action, Consumer Federation of America, Edgemont Neighborhood Coalition, the Migrant Legal Action Program, the National Coalition for the Homeless, the National Community Voice Mail Federation and Dr. Marcia Zashin, Education Consultant to the Cleveland Public Schools and Project ACT ("USCCB, *et al.*" or "Joint Commenters"),[1] through undersigned counsel, hereby submit the following comments, pursuant to the request of the Federal-State Joint Board on Universal Service ("Joint Board") for comments regarding the definition of federal universal service so that the Joint Board may review and recommend

[1] USCCB, *et al.* are religious and non-profit organizations that advocate for the interests of low-income individuals and their families. *See* Appendix for descriptions of the participating organizations and their constituencies.

modifications to the list of services eligible for the support of the federal universal service fund ("USF").[2]

As further detailed below, USCCB, *et al.* strongly urge the Joint Board to recommend that the Commission approve USF support for (A) improved residential local exchange service, including (i) soft dial tone and (ii) expanded area service, and (B) functional substitutes for local exchange service, including (i) wireless service and (ii) a combination of prepaid local usage and voice mail, to ensure that all eligible customers have sufficient means and opportunities to access the telecommunications network.

I. Background

The Telecommunications Act of 1996 (the "1996 Act")[3] sets forth the criteria under which the Federal Communications Commission ("Commission") must establish the definition of universal service. When considering whether services or network components should be included in the definition of universal service, the Joint Board and the Commission must consider the extent to which those services or components:

(A) "are essential to education, public health, or public safety;"

(B) "have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;"

(C) "are being deployed in public telecommunications networks by telecommunications carriers;" and

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[2] *See Federal-State Joint Board on Universal Service Seeks Comment on Review of the Definition of Universal Service*, CC Docket 96-45, FCC 01-J-1 (rel. Aug. 21, 2001) ("August 21, 2001 Public Notice").

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

(D) "are consistent with the public interest, convenience, and necessity."[4]

It is important to note, however, that the Commission concluded in the First Report and Order that "all four criteria enumerated in section 254(c)(1) *must be considered, but not necessarily met*, before a service may be included within the definition of universal service."[5] Furthermore, the Joint Board recommended, and the Commission adopted, a review process that defined "telecommunications services" in a "functional sense, rather than on the basis of tariffed services."[6]

II. The Scope of Local Exchange Service Supported By the USF Should Be Expanded to Include Soft Dial Tone and Expanded Area Service

The Commission's definition of voice grade local exchange service, for purposes of identifying services eligible for support from the USF, currently includes certain basic network elements and functionalities used to provide local exchange service.[7] This

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[4] 47 U.S.C. § 254(c)(1)(A)-(D) (2000).

[5] *See Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8809 ¶ 61 (1997) ("First Report and Order") (subsequent history omitted) (emphasis added) (noting that the Commission interpreted the statutory language as "providing flexibility for the Commission to establish a definition of services to be supported, after it considers the criteria enumerated in section 254(c)(1)(A)-(D)").

[6] *Id.* (noting that the Commission finds that "this definition of core universal services promotes competitive neutrality because it is technologically neutral, and provides more flexibility for defining universal service than would a services-only approach").

[7] These network elements and functionalities include: single-party service, voice grade access to the public switched telephone network, local usage support, Dual Tone Multifrequency signaling or its functional equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance, and toll limitation services for qualifying low-income consumers. *See Id.* at 8807-8825, ¶ 56-87.

definition, however, is insufficient to connect a large number of low-income Americans to the telecommunications network at "just, reasonable and affordable rates."[8]

In its review of new services for possible addition to the USF-supported list, USCCB, *et al.* have identified two additional service elements, "soft dial tone" and "expanded area service" ("EAS"), that meet the definitional criteria set forth in section 254(c)(1). Support of these services and elements would produce minimal financial impact on the USF, and, most importantly, would benefit the public interest by increasing subscribership to the telecommunications network and providing wider access to health, safety, educational, business and community services and opportunities for all Americans.

Accordingly, USCCB, *et al.* request that the Joint Board that the Commission include soft dial tone and expanded area service within the scope of the local exchange service and network elements supported by the USF.

A. Soft Dial Tone Should Be Supported by the USF Because It Is Essential to Public Health and Safety

USCCB, *et al.* strongly urge the Joint Board to recommend that the Commission add "soft dial tone" to the list of USF-supported services. Soft dial tone is a class of telephone service that enables a line that has been disconnected, voluntarily or involuntarily, to be used to access the telecommunications network to contact, and be contacted by, 911 emergency service personnel.[9] As such, soft dial tone provides

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[8] 47 U.S.C. § 254(b)(1) (2000); *see also* 47 U.S.C. § 254(i) (2000) ("The Commission and the States should ensure that universal service is available at rates that are just, reasonable and affordable.").

[9] Some carriers also may provide access to the local exchange carrier's ("LEC") central business office for recipients of soft dial tone service. *See infra* note 26.

compelling public health and safety benefits -- analogous to those mandated by the Commission for wireless service[10] -- by permitting residential subscribers whose local phone service has been disconnected to receive unrestricted access to emergency services.

1. Soft Dial Tone Meets the Section 254(c)(1) Criteria for Funding

Soft dial tone meets all four of the Commission's definitional criteria set forth in section 254(c)(1) of the 1996 Act.[11] In fact, soft dial tone is part and parcel of "access to emergency services," a local network service component that the Commission included within the definition of core services eligible for USF support in the First Report and Order.[12]

a. Soft Dial Tone Is Essential to Public Health and Public Safety

Soft dial tone is essential to public health and safety, in conformity with section 254(c)(1)(A), because the very purpose of soft dial tone is to provide access to 911 emergency services from phones that otherwise are disconnected from the telecommunications network, thus leaving customers with no alternative means to contact emergency services.

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[10] *Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems,* Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18695, ¶ 36 (1996) ("E911 Order") (noting that the Commission "[found] it preferable to . . . require carriers to transmit all 911 calls to the appropriate [public safety access providers]," regardless of whether the calls are made from phones that are service-activated).

[11] *See* 47 U.S.C. § 254(c)(1) (2000).

[12] *See* First Report and Order at 8815-8817, ¶ 72-74.

The Commission already has considered and made a determination on this very issue in the wireless context. The Commission found in its E911 Order that the "prevention of delay" in calling 911 "is critically important in protecting the safety of life and property in emergency situations."[13] Furthermore, when faced with the choice of requiring wireless carriers to forward all 911 calls, or only those that had been validated to prove that the handset belong to customers in good standing, the Commission found that "the public interest would clearly be better served by requiring covered carriers to forward all 911 calls."[14] The Commission should apply this reasoning to the wireline context and support the provision of access to emergency services, via soft dial tone, for all subscribers who have been disconnected, for whatever reason, from the local network.

The Commission noted in its E911 Order that requiring wireless carriers to provide soft dial tone was to ensure that customers had the "capability of accessing 911 service while the user is away from his or her home or office."[15] This view assumes that the customer has access to 911 service at home. Yet, without soft dial tone, many Americans lack access to 911 from home.

Access to 911 from home is of critical importance for all Americans because more accidents happen in the home than any other location. According to the Center for Disease Control, 20,000 deaths and nearly 25 million injuries occur in homes in the U.S. each year, with one person in ten requiring medical attention each year as a result of a

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[13] E911 Order at 18694, ¶ 34.

[14] *Memorandum Opinion and Order*, Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket 94-102 at ¶ 33 (rel. Dec. 23, 1997).

[15] E911 Order at 18695, ¶ 37.

home accident.[16] About 80,000 of these injuries cause some degree of permanent impairment.[17] Additionally, as the Massachusetts Police Chiefs Association pointed out in its request that Verizon (formerly Bell Atlantic-Massachusetts) continues to provide a grace period for emergency calls after residential phone service has been disconnected, the inability to call for emergency assistance also harms victims of domestic violence, whose spouses or significant others might disconnect phone service to prevent the victims from calling 911.[18] The local network is by far the primary, if not the only, means by which a customers can call for emergency assistance for his or her own protection, or on behalf of others in the household, apartment building or neighborhood who need help. Unless an individual who lacks local residential phone service has access to a wireless phone or payphone (the latter of which, as discussed in section II.A, are becoming increasing difficult to find), that individual is unable to call for help. Soft dial tone also provides a means for public safety personnel to call back a customer in the event that the line becomes disconnected during an emergency call.[19]

The ability to call in to a soft dial tone customer also would allow public safety autodialing services, such as those employed by municipalities and schools, to call in to warn the customer of important events implicating the safety of the customer and the

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[16] Centers for Disease Control and Prevention, National Ag Safety Database, Home Safety Checklist (1992), *at* http://www.cdc.gov/niosh/nasd/docs/as04700.html. The most common home accidents include: falls, fires and burns, poisonings, suffocation, firearms, electricity, drownings, and injuries from toys and recreational activities.

[17] *Id.* The study further notes that "accidents resulting in injury and death occur more frequently in the home than on the job."

[18] *See Emergency Calls Sought For Disconnected Phones*, South Coast Today, June 23, 1999, *at* http://www.s-t.com/daily/06-99/06-23-99/a03sr022.htm.

[19] This could happen if, for example, a panicked caller hangs up or drops the phone.

community at large. Such systems include the Community Alert Network, which has been providing warnings by telephone to communities across the U.S. since 1981 regarding such emergencies as fires and explosions, industrial accidents, hazardous materials spills, floods, water or gas line breaks, train derailments and missing persons, helping to save lives and property before during and after emergencies arise.[20]

Newer systems, such as the Civil Defense Warning Network[21] and SchoolWarn,[22] also enable users to rapidly notify select groups of individuals as well as large population centers via a variety of methods utilizing the PSTN, including telephone speech, facsimile and e-mail. With new products, such as Telecordia's Community Notification Solutions, emergency officials can to send digital messages through the telephone network to inexpensive notification devices that sound alarms, flash colored lights, and display and store time-stamped messages.[23] In light of the emergencies that have plagued our country during the past two months, the Commission's task of ensuring that all Americans have access to public safety information is more urgent than ever.

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[20] Community Alert Network website, *available at* http://www.can-intl.com/intro.htm. Examples of events for which the network was used include: evacuation of 80 residents of a Louisiana community when 3,000 pounds of organic peroxide escaped into the atmosphere, advisory to residents in a Louisiana parish of contaminated water supplies after Hurricane Andrew and warnings regarding prison escapes in New Mexico.

[21] *See* Civil Defense Network website, *available at* http://www.civildefensewarn.net.

[22] *See* SchoolWarn website, *available at* http://www.schoolwarn.com/. The SchoolWarn.NET application alerts parents and guardians to school closings and student absences.

[23] *See* Press Release, Telecordia Technologies, Telecordia Introduces Community Network Solutions (Jan. 24, 2000), *available at* http://www.telcordia.com/newsroom/pressreleases/000124cns.html.

b. Soft Dial Tone Provides Access to Emergency Services, Which Are Already Available to Almost All Local Telephone Subscribers

Although soft dial tone is not a service or network element to which a customer can "subscribe" in the traditional sense, "911 service is widely deployed and available to a majority of residential subscribers, consistent with sections 254(c)(1)(B) and (C)." Just as the Commission found that access to emergency services satisfies the criteria of subsections (c)(1)(B) and (c)(1)(C), the Commission should find that soft dial tone likewise satisfies these criteria because soft dial tone provides exactly the same public safety benefits provided by voice grade service standard emergency access currently supported by the USF. The only difference is that a person calling 911 via soft dial tone does not have access to local or toll calling.[24]

c. Soft Dial Tone is Consistent with the Public Interest

It is in the public interest, convenience and necessity, consistent with subsection (c)(1)(D), to ensure that individuals who are disconnected from the local network still have some means of accessing the potentially life-saving emergency services made available by the provision of soft dial tone. The most common reason for disconnection by Lifeline subscribers is failure to pay local phone bills. Many such subscribers are only temporarily unable to pay their local phone bills, and generally have an incentive to pay

[24] As discussed *infra* at note 26, some carriers provide soft dial tone service to allow customers to access to the carrier's central office to initiate or reconnect service. Although this arrangement primarily exists to create economic efficiencies for the carrier and customers, it is also serves to enhance public health, safety and education by providing an efficient means for customers to connect to the telecommunications network and access hospitals, non-emergency public safety personnel, schools, libraries and other community services that cannot be reached by calling 911.

their local phone charges because most people do not want to be without the ability to call family, as well as services and businesses in their communities. During this time, households should not be deprived of the ability to access basic public safety services.

In addition, soft dial tone can provide a convenient, cost-saving mechanism for quickly initiating service to new subscribers. Carriers in some cases do not physically disconnect facilities when a customer voluntarily discontinues service and leaves a residence.[25] This enables carriers, for example, to provide soft dial tone to new residential customers, allowing customers to plug in their phones, call the business office and have full service launched remotely, without the need find a phone to call for service, or wait for the carrier to install service.[26] Soft dial tone thus provides customers with the potential to not only to access 911, but to establish local service that will enable the customer to connect with and participate in the telecommunications network as a whole.

2. Support of Soft Dial Tone Would Have Minimal Impact on the USF

Another significant reason why the Joint Board should recommend that the soft dial tone should be included in the list of services supported by the USF is that support of soft dial tone likely would have only a minimal impact on the universal service fund.

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[25] *See New England Telephone and Telegraph Company, Responses to Requests for Information*, Commonwealth of Massachusetts Department of Transportation and Energy DTE 99-271, RR #65 (Nov. 1, 1999) ("For the disconnect of a [Bell Atlantic-Massachusetts] first line residential dial-tone line, the cross-connect between the switch port and the loop may be left in place and reused for the next customer at that location. However, the cross-connect is removed, and not reused, if the disconnected switch port is needed to satisfy new service for a customer at another location.").

[26] *See* Jeff Manning, "Fueling Their Pain," The Oregonian Online, Mar. 12, 2000, *available at* http://www.oregonlive.com/business/00/03/b031201.html. (describing how USWest offered a soft dial tone to its central offices, through remote service initiation and "pre-provisioning" of newly-constructed residential lines, to avoid costly service trips in the wake of a significant increase in gasoline prices).

Vermont's experience in instituting a requirement that all local exchange carriers ("LECs") provide soft dial tone service for all disconnected residential phone lines for as long as they remain disconnected provides compelling evidence that the costs of providing and notifying customers of the availability of soft dial tone are very low.

When the Vermont Public Service Board ("Vermont Board") initiated its soft dial tone proceeding over three years ago, it required LECs that offer service in Vermont to show why the LECs should not be required to provide soft dial tone (which Vermont calls "continuous emergency access" or "CEA") at no charge to all local residential subscribers.[27] Based on the conclusions of engineers at Vermont's Department of Public Service, the Vermont Board presumed, in the absence of evidence to the contrary, that maintaining dial tone to provide CEA imposes no, or insignificant, costs on LECs for a residential line that had already been service-initiated.[28] The Vermont Board found, after conducting hearings and taking testimony of affected parties in the CEA proceeding, that LECs, as a common business practice, do not physically disconnect facilities after

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[27] *Investigation into New England Telephone and Telegraph Company's Tariff Filing re: Open Network Architecture Including the Unbundling of NET's Network, Expanded Interconnection and Intelligent Networks*, Vermont P.S.B. Docket No. 5713, Order (issued Feb. 4, 1999) ("Vermont CEA Order"). The CEA requirements are in the process of being codified as V.P.S.B. Rule 7.100 *et al.*, and should become effective in 2002.

[28] *See* Vermont CEA Order at 6 ("In the absence of evidence to the contrary, it is reasonable to conclude at this time that the costs of providing CEA are small or perhaps even negative. Consequently, there is no impediment to maintaining it indefinitely; in fact, it appears that there would be an unnecessary cost associated with actually turning it off after it had been initiated"); *see also* Direct Testimony of William Shapiro on Behalf of the Department of Public Service, Docket No. 5713 (April 8, 1997) ("The cost of CEA is a negative number. It is less labor intensive to provide CEA by doing nothing but reprogramming the class of service than it is to disconnect the line and then reconnect it at a later date").

residential service is terminated.[29] Thus, based on Vermont's findings, the cost of providing service to the local public safety access point is *de minimus* at most.

Vermont's implementation of soft dial tone/CEA also illustrates the benefits of the soft dial tone, and highlights the fact that soft dial tone does not pose a risk of overloading the local 911 system. During the period of January 1 through June 30, 2001, the state's E-911 Board reported that 256 CEA calls were received, yielding an annual call rate of approximately 500 CEA calls out of approximately 180,000 911 calls made over its 400,000 residential lines.[30] So although CEA/soft dial tone calls comprise only about .25 percent of all 911 calls in the state of Vermont, the number of CEA calls, 500, is significant in terms of the lives and property of the hundreds CEA callers who were able to contact 911 in an emergency.

USCCB, *et al.* believes that, for a *de minimus* amount of USF support, the Commission can ensure that all citizens, not just those who are able to keep up with their local phone bills each month, or are within reach of a wireless or payphone, can access the essential emergency services are intended to assist and protect all Americans. To the extent that the goal of universal service is to provide a "Lifeline" to low-income and

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[29] The Board found that it was the practice of the incumbent LEC, Verizon, to refrain from deactivating residential lines, whether regular local service had been discontinued voluntarily by the customer or involuntarily. This is because Verizon typically receives requests to reinitiate a residential line relatively soon after discontinuing service, either by the original subscriber (*e.g.,* who had service cut off, but then was able to pay outstanding bills) or a new subscriber (*e.g.,* a new subscriber who moved in to the residence). Telephone interview with Gregg Faber, Utilities Analyst, Vermont Public Service Board (Oct. 1, 2001).

[30] Mr. Faber also noted that it is impossible to determine how many CEA lines are in use at a particular time because residential service is disconnected and reconnected with great frequency and for a variety of reasons and durations, such as owners of a vacation home reactivating service each time they occupy the home. *Id.*

other subscribers, surely there can be no greater life line for all Americans than access to the potentially life-saving services of 911. Accordingly, USCCB, *et al.* strongly urge the Joint Board to recommend that the Commission add soft dial tone to the list of USF-supported services.[31]

B. Expanded Area Service ("EAS") Should Be Supported by the USF to Allow Low-Income Individuals to Contact Their Communities of Interest without Incurring Toll Charges

USCCB, *et al.* also strongly urge the Joint Board to recommend that the Commission provide USF support for expanded area service ("EAS") in areas where EAS is available.[32] EAS is offered by many LECs, upon approval of the state public utility commission, as an optional service that allows subscribers to make local calls to additional exchanges that otherwise would not be included in the subscriber's standard local calling area.[33]

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[31] USCCB, *et al.* support a requirement for USF funding to maintain soft dial tone for any line for which local service has been involuntarily discontinued and will discuss this issue further in the Joint Board's concurrent Lifeline eligibility proceeding.

[32] USCCB, *et al.* believe that that the subsidy should be available for Lifeline subscribers and those in certain rural, high-cost areas. USCCB, *et al.* will address eligibility issues further in the reply comments in the eligibility proceeding.

[33] Federal support of EAS does not implicate federal-state jurisdictional issues, because EAS areas are designated by state public utility commissions through state approval mechanisms. To the extent that the USF is used to subsidize state-defined local calling areas, support of EAS is no different from the USF support already provided for single-party, voice grade local exchange service, and the network elements and functionalities need to provide such service. In most states, customers must file a petition with the state utility commission to designate an EAS area. Customers must identify the exchanges they propose should be comprise the EAS. Many states look to the Commission's definition of "community of interest" in determining whether the current local calling area is insufficient to allow affordable calling to essential services. If the number of subscribers interested in the EAS meets the state's minimum thresholds, then the state commission will require the LEC that serves the area for perform a study to determine the cost of providing EAS to that area. If a majority of customers consent and the state commission approves of the surcharge that would be imposed to cover the LEC's cost of

For many residential subscribers, particularly low-income subscribers in rural, tribal and insular areas, the scope of the local calling area is too small to allow such subscribers to contact essential services, such as schools, hospitals, businesses, with a toll-free local call. As a result, these subscribers often incur substantial toll charges when calling the services and individuals that comprise their "community of interest."[34] This often puts such individuals at a disadvantage in accessing the telecommunications network as compared to other residential subscribers whose communities of interest fall within their local calling areas. EAS provides an administratively manageable and cost-effective solution to the goal of the 1996 Act to provide access to telecommunications services "that are reasonably comparable to those services provided in urban areas and that are available at rate that are reasonably comparable to rates charged for similar services in urban areas."[35]

1. EAS Meets the Section 254(c)(1) Criteria for Funding

EAS meets the four criteria of section 254(c)(1)[36] because EAS simply is the provision of local exchange service -- which the Commission has already found meets the section 254(c)(1) criteria and is supported by the USF -- to exchanges that comprise the communities of interest of a majority of subscribers in that area, but are not within the

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providing EAS, the LEC must offer EAS as an optional, tariffed service for the defined area. *See generally* Petition to Expand the Chestertown-Sandown Exchange, Order Granting Opportunity to Poll Citizens, N.H. P.S.C. Order No. 22,682 (Aug. 18, 1997).

[34] According to the Commission, a calling area which reflects a community of interest is one that "allows subscribers to call hospitals, schools and other essential services without incurring a toll charge." *See* First Report and Order at 8840, ¶ 72.

[35] 47 U.S.C. § 254(b)(3) (2000).

[36] *See* 47 U.S.C. § 254(c)(1) (2000).

scope of the original local calling area. EAS, in effect, provides an method for subscribers, state utility commissions and LECs, to realign local calling areas that, for whatever reason, fail to comport with the calling patterns of local communities. In this regard, EAS offers a valuable means to ensure that all subscribers have access to their communities of interest at comparable, affordable rates.

a. EAS Is Essential for Providing Access to Education, Public Health and Public Safety

EAS meets the criteria of section 254 (c)(1)(A) because EAS is essential in providing low-income individuals with affordable access to education, public health and public safety services within their communities of interest. Essential services are only accessible to the extent that subscribers can afford to pay for them. As such, a key factor that the Commission considers in determining whether local rates are affordable is the amount of toll charges a consumer incurs to contact "essential service providers such as hospitals, schools and government offices."[37]

Local toll calling presents huge obstacles for low-income and many rural subscribers attempting to contact such essential services. As the Commission pointed out in its First Report and Order, "access to interexchange services is essential for education, public health and public safety, particularly for consumers who live in rural areas and require access to interexchange services to reach medical and emergency services, schools and local government offices."[38] For low-income consumers, however, the Commission noted that "uncontrollable toll charges" presented a substantial burden to

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[37] *Id.*

[38] *See* First Report and Order at 8818, ¶ 76.

maintaining affordable local service.[39] Accordingly, many such individuals are deterred from participating in the telecommunications network, either by substantially limiting the number of calls they make at non-subsidized intrastate toll rates, or by declining telephone service altogether.[40] EAS provides a way for subscribers to access to their communities of interest without the barriers that toll charges can impose on low-income consumers seeking access to their communities of interest.

b. EAS Is Commonly Subscribed to by Residential Customers Where EAS Is Available

EAS is subscribed to by a majority of customers in areas in which EAS is available. In order for an area to receive an EAS designation, a majority of telephone subscribers must show that they are willing to pay extra for the service. Accordingly, pursuant to section of 254(c)(1)(B), EAS is a service that has, "through the operation of market choices by customers" become a well-subscribed service in the areas where it is offered.[41]

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[39] *See id.* at 8822, ¶ 82.

[40] *See, e.g.,* Twelfth Report and Order at 1220 n.48 (citing comments of the National Telephone Cooperative Association that "the greatest concern for NTCA member companies serving tribal lands is toll calling. Subscribers generate high toll charges because local calling areas often do not encompass hospitals, government agencies, cultural centers or entertainment centers in tribal areas); state utility commissions have recognized, however, that EAS provides a worthwhile calling option for subscribers who otherwise might be deterred or prevented from making calls within their community of interest by long distance tolls. *See Order Granting Opportunity to Poll Citizens*, Petition to Expand the Chestertown-Sandown Exchange, N.H. P.S.C. Order No. 22,682 (Aug. 18, 1997).

[41] 47 U.S.C. § 254(c)(1)(B) (2000). EAS generally is requested in areas for which subscribers' communities of interest are spread over a wide area or otherwise happen to have subscribers and services that are located different calling areas. For example, customers of Teton Telecom and Silver Star Telephone Co. in Idaho showed "overwhelming support" for an $11.25 per month increase in local phones rates, because, as several witnesses testified, they "estimated saving many times that amount in toll

c. EAS Is Widely Deployed by Telecommunications Carriers When Requested by Residential Subscribers

EAS is commonly deployed by telecommunications carriers, including rural carriers,[42] in areas that state utility commissions have designated as eligible for EAS rate plans. EAS also is widely deployed among wireless local carriers, many of whom offer broad, regional calling areas.[43] Accordingly, EAS meets the criteria of section 254(c)(1)(C).

d. EAS Is Consistent with the Public Interest Because It Permits More Subscribers to Access the Local Network

In conformity with section 254(c)(1)(D), EAS also is vital to the public interest because, by mitigating against high toll charges, EAS makes communicating via the local network more affordable for low-income subscribers. EAS permits and encourages more subscribers to access the local network, and accordingly, communicate with and participate in their communities of interest. As the Commission pointed out in the First Report and Order, all subscribers benefit the "increased value of the telephone network

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charges." *See Toll-Free E. Idaho Calls For Residents of Teton, Swan Valleys*, Idaho News, Mar. 6, 1998, *available at* http://www.idahonews.com/030698/THEWEST/14919.htm.

[42] In most states, if a sufficient number of subscribers request EAS, the utility commission approves and the majority of subscribers are willing to pay the EAS surcharge, the LEC(s) for that area are required to offer EAS unless the LEC meets an exemption, such as for carriers that serve only a limited number of subscribers and/or exchanges. *See, e.g.,* M.C.L. 484.2304(11), M.S.A. 22.1469(11) (Michigan Telecommunications Act of 1996).

[43] Most wireless carriers charge the same rate for all calls made within the carrier's service area, whether the service area is regional or nationwide. *See, e.g.,* Voice Stream Wireless Whenever, Wherever plans, *available at* http://www.voicestream.com/products/services/rateplans/dc_balt.asp. As discussed in section II.A, wireless local service is a functional substitute for wireline service.

that results from high subscribership levels."[44] As such, EAS enhances the overall value of the telecommunications network for all Americans.

2. A Capped Amount of EAS Support Would Have Minimal Impact on the USF

USCCB, *et al.* believe that the most administratively manageable and cost-efficient way to support EAS is to provide a subsidy, up to a certain predetermined amount, to eligible subscribers for whom their community of interest is outside their local calling area.

A key objective of universal service is to ensure that "consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas at rates that are reasonably comparable to rates charged for similar services in urban areas."[45] However, customers who are eligible to subscribe to EAS generally pay more -- because they incur tolls and EAS charges for contacting their communities of interest -- than similarly-situated subscribers in more urbanized areas for comparable service, a result which is inconsistent with the goals of the 1996 Act.[46]

Ideally, to make the cost of local service equitable for these subscribers, the entire EAS surcharge should be subsidized by the USF. The EAS surcharge varies widely,

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[44] First Report and Order at 8844, ¶ 122.

[45] 47 U.S.C. 254(b)(3) (2000).

[46] For example, Verizon's local calling area for the Kitzmiller, Maryland comprises three calling zones for $7.96 per month for unlimited local usage, while the Silver Spring, Maryland calling area comprises 24 calling zones for only $10.15 per month for unlimited local usage. *See* Verizon Maryland, Inc., P.S.C. Md. No. 202, Local Exchange Tariff, §§ 2.C.2.a(1)(b) and b(1)(b) (effective Dec. 6, 2000).

however, with the actual cost of providing EAS depending upon a number of variables, including the distance between customers and the numbers of exchanges and subscribers served. Although the EAS surcharge for many areas is only a few dollars per month,[47] EAS surcharges can be double or triple the basic local service rate if subscribers are widely dispersed or the EAS plan otherwise covers a large area.[48]

The Commission's Twelfth Report and Order provides some guidance as to how to calculate the subsidy. Although the Twelfth Report and Order was intended to apply to eligible individuals residing on or near tribal lands, the goal to "eliminate or diminish the unafforability for those low-income individuals for whom it may be difficult to maintain telephone service even where facilities are present"[49] remains the same. The Commission considered the minimum and maximum range that subscribers residing on or near tribal lands pay for local phone service.[50] The Commission determined that a subsidy of an additional $25 per month for each eligible Lifeline recipient in such areas

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[47] Monthly surcharges for various EAS areas in Ohio range from approximately $1.00 to $8.00. *See, e.g.* Marc Kovac, *PUCO Approves Sprint's Plan to End Some Tolls*, The Daily Record, June 30, 2001, *at* http://www.the-daily-record.com/pastissues/06jun/010630_dr3.html (Ohio customers agreed to an EAS plan that would increase some customers' basic phone service bill by an average of $1 a month); Local Exchange Tariff, PUCO No. 9, The Western Reserve Telephone Co., Modified Extended Local Calling Service, section S1B.2C., Flat Rate Option (effective Dec. 1, 1997) (EAS rate of $6.00 per month).

[48] *See Toll Free E. Idaho Calls For Residents of Teton, Swan Valleys*, Idaho News, Mar. 6, 1998, *at* http://www.idahonews.com/030698/THE_WEST/14919.htm (Although residential rates under a service plan combining two local calling areas into one expanded calling area raised residential rates from "$11.25 a month to $24.10," customers attending the hearing regarding the proposed plan "turned out to show overwhelming support for inclusion in the expanded calling area.").

[49] Twelfth Report and Order at 12233, ¶ 46.

[50] *See id.*

would reduce to the cost of local service to less than $10, and $1 in most areas, an amount that is comparable to the monthly rate that Lifeline recipients in urban areas such as New York and Washington, D.C. pay for local service.[51]

In the same vein, the Joint Board should recommend that the Commission subsidize the EAS surcharge for eligible subscribers so that such subscribers will not pay more to call their community of interest than similarly-situated eligible subscribers in other areas. As with the most expensive rate of local service, the Joint Board may advise that the Commission may choose not to subsidize fully the EAS surcharges at the high end of the range. The Joint Board should, however, request that the Commission consider the range of EAS surcharges for the majority of areas in which EAS is offered. EAS surcharges typically range from $1 to $8, and are higher in a number of areas.[52]

USCCB, *et al.* therefore ask that the Joint Board recommend that the Commission provide USF support for EAS, as EAS provides a tremendous benefit to the American public in offering low-income subscribers affordable access to essential public health and safety services within subscribers' communities of interest, with only a minimal impact on the USF.

III. Functional Substitutes for Wireline Service for Low Income Customers for Whom Obtaining Residential Wireline Service Is Cost-Prohibitive or Not Possible Should Be Supported by the USF

USCCB, *et al.* also urge the Joint Board to consider the telecommunications needs of individuals for whom obtaining residential wireline service is cost-prohibitive or impossible and increase subscribership among them by recommending that the

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[51] *See id.*

[52] *See supra* note 47 (noting that the average price range for EAS is $1 to $8).